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EXAMINER

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/694,925
Filing Date: October 27, 2003
Appellant(s): MONK, JUSTIN

Michael L. Drapkin
For Appellant

EXAMINER'S ANSWER

This is in response to the supplemental appeal brief filed 6/22/06 appealing from the
Final Office action mailed 11/25/05.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is incorrect. A correct statement of the status of the claims is as follows:

Claims 1-7 are believed to be properly rejected.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is substantially correct. The changes are as follows:

GROUND 2; Claims 2-7 have not been argued separately except to repeat what was already stated with reference to the sole independent claim 1.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

No evidence is relied upon by the examiner in the rejection of the claims under appeal except for as follows:

Blossom US 6631849

Cameron et al. US 5839117

Melchione et al. US 5939117

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Blossom in view of Cameron et al. and Melchione et al.

Blossom discloses receiving at a POS device a cost for a transaction (col. 3, line 28 card 10 may be used with a POS device which means a cost incurred) identifying an instrument associated with a stored-value account and a credit account (card 10), generating a request to select a distribution of the cost for the transaction among the stored-value and credit accounts for presentation at the point-of-sale device (Blossom discloses use of his card in a conventional card reader which "allows a user to select a card feature" the mere presentation of plural payment options is read as "generating a request" because the card won't function unless a selection is made; the step of transmitting the cost payment to the financial institution is deemed obvious and old to the card reader art and is accomplished in Cameron et al.

However Blossom does not disclose the stored-value account and the credit account linked substantially contemporaneously with issuance of the instrument to the customer nor does it teach a selected distribution identifying a first non zero portion of the cost of the transaction applied to a stored value and a second non zero of the cost of the transaction to be applied to a credit card. However, Cameron et al do disclose selecting a non zero portion of a charge to be allocated between two credit cards, a credit card and a stored value instrument (e.g., a non specific dollar off coupon or gift certificate) or between two stored value instruments, see col. 11, lines 55 et seq. It would be obvious to modify the POS sales device of Blossom to include the receiving at the POS terminal a response in the form of an elective distribution feature of allocating payments between stored value gift certificate and credit card as taught by Cameron because the motivation would be to limit the use of the credit card and hence the limiting of high rates of interest.

Regarding the limitation of substantially contemporaneously linking the stored values and the credit card, the scheme of Fig. 1 shows the linked system which is read as being substantially contemporaneous. In addition, Melchione et al. do disclose a system where "in a single session" an

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accounts are linked together. (see, Abstract of US '764 last sentence "The system... for opening an account in a *single session* that is in communication with") It would be an obvious modification to Blossom to include the single session linking feature in order to link the stored value and the credit accounts at substantially the same time, the motivation being that this will keep both accounts as an option from the beginning of the card's use.

Re claim 2: Blossom discloses use of his card in a conventional card reader which "allows a user to select a card feature".

Re claims 3 and 4: official notice is taken with respect to which items are available for stored value points see e.g. frequent flyer points cannot be applied during holiday flights and some retail businesses restrict what can be purchased by credit cards e.g. stamps and lotto tickets are cash based only.

Re claim 5: see col. 7 lines 6-9 for display of stored value.

Re claims 6 and 7: the step of applying only what is available in either credit or value to a cost and/or splitting same between them is deemed an old and obvious expedient.

(10) Response to Argument

The major issue for the Board to decide is whether allocating a portion of a cost between two accounts, namely between debit and credit accounts, is patentable. The prior art shows this practice to be old. Appellant admits "... a single card associated with two or more accounts..." is known. (See Brief, page 4 line 13). Further to these ends, the primary reference to Blossom discloses a card in Fig. 3A having both a debit (prepaid) and a credit feature. It is the Examiner's opinion that the practice of allocating a cost between accounts, such as the credit and debit accounts in Blossom, was known as evidenced by the disclosure in Cameron et al. 5,839,117. Appellant does not seem to challenge the existence of claim elements in the proposed combination of Blossom and Cameron et al., but rather simply maintains the combination cannot be made¹.

The secondary reference to Cameron et al. clearly discloses allocating a cost among different payment vehicles, see, col. 11 lines:

¹ Appellant argues that "Blossom merely discloses selecting a feature for a particular transaction, and no cost distribution is discussed or suggested". However, the

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the customer may allocate either a dollar amount or a percent of the total order amount to each payment method, with the exception of coupons and gift certificates that state a specific dollar off amount.

Like the vehicles used by Appellant, Cameron et al. disclose these payment vehicles as being a stored value vehicle, e.g. gift certificate, and a credit card account, see col. 10 lines 55 et seq.:

the available payment methods for the company providing the offer or offers being ordered is displayed at available payment method data capture field 104. Such payment methods may include, for example, a credit card, a check, a coupon, and/or a recovery coupon (i.e., gift certificate).

Therefore, Cameron et al. provides a teaching for distributing the cost of a transaction between a stored value account and a credit card account.

Appellant argues Cameron et al. and Blossom cannot be combined because "both the practical and technical issues associated with transactions for a computerized remote order entry window and a point of sale device are very different". First, by this statement, it is clear that Appellant concedes the use of a POS device in Blossom which transacts the steps

feature of cost distribution is conceded as not found in Blossom, so it is questioned why Appellant has even made the argument to the Board.

recited in claim 1 except for the distribution feature.² To argue however that the computerized remote order entry system of Cameron et al. is not a POS device, or does not function like one, or is not the equivalent of one cannot be accepted as valid. First, both devices deal with a transaction, and both deal with a person desiring to pay for an item or service, and both have available to them plural financial accounts which through these stations can be charged as payment without cash ever changing hands. Furthermore, Blossom specifically discloses "a card feature may be selected by a variety of means, such as by input ...on the Internet...", (See, col. 3 lines 31,32). Thus, Appellant's argument that the instrument in Blossom can only be used in conjunction with a point of sale device flies in the face of Blossom's disclosure of it being used over the Internet which serves as clear suggestion and/or motivation for combining it with the computerized remote ordering device in Cameron et al.

Appellant next argues that Cameron et al. fail to disclose different accounts from the same instrument. First and foremost, there is no language in claim 1 which uses the terms "same instrument". Even if there was such language recited,

² Notwithstanding, col. 3 line 27, clearly discloses using the card in a retail POS computer which would be responsible for receiving the cost, receiving the card ID,

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such language is so broad as to be of little significance in that Webster's Collegiate Tenth Dictionary defines "instrument", inter alia, as:

2 a : a means whereby something is achieved, performed or furthered.

There can be no question that the system in Cameron et al. distributes cost among accounts, and that these accounts are embodied in the same instrument, namely in the Cameron et al. system, which achieves payment for something. Thus, the combination of Blossom and Cameron is valid and must be sustained for the reasons set for above.

Finally, Appellant argues the feature of "the accounts were linked substantially contemporaneously with issuance of the instrument to the customer" is not found in the prior art, particularly, with respect to Melchione et al. First, taking the definition of "instrument" as set forth above, it is clear that the term is so broad that it can be defined by the physical card 10 in Blossom in that when the markings for the debit and credit accounts 30 and 32 are placed on the card 10, they become

generating a request as to which account is to be charged, and transmitting instructions to apply the cost to the selected account.

substantially contemporaneously linked when issued to the holder through the holder's possession of it.

If this explanation is not enough, the Melchione et al. teaches a system where "in a single session" accounts are linked together. (See, Abstract of US '764, last sentence "The system.. for opening an account in a single session that is in communication with central database, micromarketing centers, central customer centers and branch systems ...so that data can pass between these systems where legal and appropriate.") Thus, there is a clear teaching that in one instance, an account is linked to plural supporting or like accounts to effect a legal exchange of sales data.³ The motivation to combine is clear, all three patents, Blossom, Cameron et al., and Melchione et al. disclose electronic transactions. To simultaneously link the debit and credit accounts in Blossom to one another with the issuance of the card to a user is desirable as taught by Melchione et al. because this would effect the choice between using one or the other debit or credit accounts which is the invention in Blossom, and which choice is equally important in Appellant's method.

³ Appellants seek clarification of remarks made in the Final Office Action referencing elements 21-25. These elements are clearly marked in Fig. 1 and are identifying certain source feeds 21-25 which are commonly linked together. In the Office Action, Fig.1 was incorrectly noted as Fig. 16.

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For the above reasons, it is believed that the rejections should be sustained.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this Examiner's Answer.

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Respectfully submitted,



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Primary Examiner
Art Unit 3627

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